



STATE ETHICS COMMISSION BULLETIN

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97 Percent of SFI Filers Meet Deadline

All but a handful of elected officials and public employees filed their 2003 Statements of Financial Interests on time in compliance with the state's financial disclosure law. Of the 4,711 officials and high ranking employees of state and county government, only 153 missed the deadline. As of August 1, 2004, all 4,711 individuals had filed.

Under the law, employees designated to be in major policy-making positions were required to file their Statements for calendar year 2003 by May 1, 2004. State and county elected officials and candidates for those positions were required to file their Statements by May 25, 2004.

Those who did not were sent a formal notice of lateness requiring them to file within ten days or face civil penalties. Of those 153 individuals who received formal notices of lateness, 118 filed within the ten day period. Eleven were found to have had a valid explanation for not filing on time; 15 entered into Disposition Agreements in which they agreed to pay civil penalties for failing to file within 10 days of receiving a formal lateness notice; and matters involving nine individuals are pending as of August 1, 2004.

This year marks the third year of the availability of voluntary on-line filing. Last year, 54 percent of those

required to file did so on-line. This year that number rose to 63 percent.

According to Chairman E. George Daher, "What began as one of the Commission's major activities has become an accepted requirement of public life for those of us who must file. The high rate of compliance can be credited to two factors. First, the Commission receives the cooperation and support of constitutional officers, legislative leadership, public officials and heads of state and county agencies across the state as well as filers themselves. Second, when deadlines are not met, prompt action is taken, including the imposition of costly penalties, where appropriate."

The Commission's Statements of Financial Interests Division has collected and reviewed over 100,000 SFI documents since the passage of the financial disclosure law in 1979.

Statements are available upon the written request of any individual for public inspection and copying at the Commission's office, Room 619, One Ashburton Place, Boston. By law, requests will be honored only if accompanied by proof of a requesting individual's identity. The statute requires the Commission to forward a copy of such request to the individual whose Statement has been examined.

Commission Issues Gifts and Gratuities Advisory

The Commission recently issued Commission Advisory 04-2 regarding gifts and gratuities. The advisory addresses the application of the conflict of interest law to public employees who are offered gifts or gratuities of substantial value in connection with their work or because of the position that the employees hold.

The Massachusetts conflict of interest law contains three provisions that prohibit or significantly limit a public employee's ability to accept gifts or gratuities under these circumstances.

First, the gifts and gratuities provision prohibits public employees seeking or accepting anything of substantial value for or because of their official acts or any act within their official responsibility.

Next, public employees are prohibited from using or attempting to use their position to obtain for themselves or others unwarranted privileges of substantial value that are not properly available to similarly situated individuals.

Finally, even if a gift or gratuity is not of substantial value or does not fall within the first two prohibitions, the conflict of interest law will, in many situations, require public employees to disclose to their appointing authority the gift and their relationship with the giver. Public employees who are offered or accept a gift or gratuity must ensure that they comply with all provisions of the law.

Full text of the advisory is available on the Commission's website at www.mass.gov/ethics/adv0402.htm.

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From the Executive Director

*"Politics and the
Ethics Commission"*

As the state and the nation enter the most political of times, it is important to remember that the Ethics Commission was created to be a non-partisan, apolitical board.

The Ethics Commission consists of five members appointed to staggered, five-year non-renewable terms. Three commissioners are selected by the Governor, one by the Secretary of State and one by the Attorney General. No more than two of the gubernatorial appointments and no more than three members of the Commission as a whole may be from the same political party. The commissioners serve part-time and employ a full-time staff.

Commissioners may not hold or be a candidate for any federal, state, county or municipal elected office while a member of the Commission or for one year after serving; they may not hold office in any political party or political committee; and they may not participate in or contribute to the political campaign of any candidate for federal, state, county or municipal office. The Commission's staff members face the same restrictions on political activity.

Over its 26-year history, the Commission has sought to carry out its legislative mandate without regard to political affiliation. It has accomplished this challenging task through the caliber and commitment of its members – often former judges or former prosecutors as well as practicing attorneys and law professors – and the dedication and hard work of its staff.

Peter Sturges

Commission Members Summer, 2004

E. George Daher, Chair
Christine M. Roach, Vice-Chair
Elizabeth J. Dolan
J. Owen Todd
Tracey Maclin

Carol Carson
Editor

Commission Receives Bond Money to Upgrade Case Tracking System

The Commission has received \$293,800 in funding from the Commonwealth's Information Technology Division to design and develop a new integrated case tracking management system.

The Commission's existing system, Ethos, which was developed in 1992 as a DOS application, is obsolete and requires substantial staff time to maintain and operate.

In order to maximize the services the Commission provides to the citizens of the Commonwealth, the new

system will include features that will help the Commission to provide prompt advice and guidance by

- entering and storing an entire case history in one location
- performing detailed cross-referencing
- creating letters, reports and emails that can be saved and stored.

Most importantly, the new system will help the Commission to meet its statutory mandate to promote integrity in government.

Advisory Opinions

EC-COI-04-1 - Section 15A of G.L. c. 268A does not prohibit the Dukes County Commission from appointing one of its members to the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority board of directors. The board of directors is not "under the supervision" of the commissioners.

EC-COI-04-2 - A state college professor may assign to his students textbooks he has written and receive royalties or other financial benefits from the students' purchase of the

textbooks provided he first makes a written disclosure and receives a written determination from his appointing authority pursuant to G.L. c. 268A, § 6.

EC-COI-04-3 - A housing authority employee who has responsibility for administering only the rental programs in the housing authority may qualify for the G. L. c. 268A, § 20(g) exemption in order to purchase a housing unit under the housing authority's home ownership programs.

Enforcement Division Attorney Named Executive Director of Seattle Ethics and Elections Commission

Staff Counsel Wayne Barnett, an attorney in the Commission's Enforcement Division, was recently named Executive Director of the Seattle Ethics and Elections Commission. Before joining the Commission in 2001, Barnett was an associate at Foley, Hoag & Eliot. The Commission plans to hire a new attorney in December.

Litigation Update

The Executive Director, and by delegation, the Commission's Legal Division attorneys, have special assistant attorney general status. This status permits Legal Division attorneys to represent the Commission in court proceedings, under the oversight of the Office of the Attorney General.

Luongo v. State Ethics Commission et al.

The plaintiff, Lorraine Luongo, challenged a Commission Disposition Agreement. Luongo subsequently

agreed to dismiss the lawsuit with prejudice prior to a Superior Court hearing on the Commission's motion to dismiss.

John Doe v. State Ethics Commission

In this matter, a Superior Court judge has decided that the Commission has the authority to issue summonses to compel testimony during a preliminary

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Recent Enforcement Matters

The Ethics Commission investigates numerous cases alleging violations of the conflict of interest and financial disclosure laws each year. While the Commission resolves most matters confidentially, it resolves certain cases publicly.

A decision and order concludes an adjudicatory proceeding or civil trial. The decision is a finding by the Commission that the law was or was not violated and the order determines the civil penalty or other remedy, if any. The Commission's decision may be appealed in Superior Court.

A disposition agreement is a voluntary written agreement entered into between the subject and the Commission in which the subject admits violating the law and agrees to pay a civil penalty. Disposition agreements are matters of public record once a case is concluded.

The Commission does not comment on any matter under investigation, nor does the office confirm or deny that it has received a specific complaint. The identity of any complainant is kept confidential.

Full texts of the Decisions and Orders, and Disposition Agreements can be found on the Commission's website, www.mass.gov/ethics.

Decisions and Orders

[In the Matters of Steven Rapoza and James Romano](#)

The Commission found that the cases against Berkley Board of Health members Steven Rapoza and James Romano were not proved by a preponderance of the evidence. The Commission ordered both matters dismissed. In January 2004, the Enforcement Division alleged in separate Orders to Show Cause that Rapoza and Romano each violated G.L. c. 268A, §§ 3(b) and 23(b)(2), the state's conflict of interest law, by receiving \$100 cash each from a contractor in connection with their signing a certificate of compliance for a septic system.

[In the Matter of Paul Pathiakis](#)

The Commission found that former Upton Technology Committee member Paul Pathiakis violated M.G.L. c. 268A, the state's conflict law. Pathiakis was ordered to pay a total civil penalty of \$4,000. According to the Decision and Order, the Commission found that Pathiakis violated §19 by participating as a Technology Com-

mittee member in awarding a contract, in which he was a subcontractor, to provide computer services to the town and \$20 by having a financial interest in a contract with the town. The Commission imposed the maximum fine of \$2,000 for each violation. While the conflict of interest law provides exemptions that could have allowed Pathiakis to arrange for the contract and to receive compensation for the work he did, the Commission found that Pathiakis did not take the necessary steps to receive the proper exemptions from the Board of Selectmen.

Disposition Agreements

[In the Matter of Eileen Campanini](#)

Bridgewater Zoning Board of Appeals (ZBA) member Eileen Campanini paid a \$2,000 civil penalty to resolve allegations that she violated §19 of the state's conflict of interest law when she participated in a ZBA vote upholding the issuance of a building permit that would likely affect her ability to sell property she owned. According to the Disposition Agreement, Campanini sought an "approval not required" endorsement from the Planning Board in 1998 so that she could divide property she owned. The Planning Board endorsed her plan but the building inspector told Campanini she needed a frontage variance from the ZBA. In November 2000, the ZBA denied her variance application and Campanini was unable to divide her property. Campanini was not a member of the ZBA at that time. In June, 2002, Campanini participated in a ZBA vote regarding a property in which the ZBA concluded that it was not necessary for the property owner to seek a frontage variance because the Planning Board approved the plan with an "approval not required" endorsement. After the building inspector issued a permit, abutters appealed to the ZBA. In January 2003, Campanini participated in a ZBA vote upholding the issuance of the building permit for that property. At the time of the January 2003 meeting, Campanini knew that

the outcome of the matter would likely affect the status of a building permit for her own property because, in November 2002, Campanini and a local developer were parties to a purchase and sale agreement in which the developer would pay Campanini \$150,000 for the property provided he could get a building permit to construct a single family home. Campanini's vote to uphold the permit for the other property made it likely that a building permit would issue for her property, clearing the way for the sale.

[In the Matter of Paul Coelho](#)

The Commission fined former Norfolk Building Commissioner Paul Coelho, a Plainville resident, \$3,000 for violating M.G.L. c. 268A, the conflict of interest law. According to the Disposition Agreement, Coelho violated § 19 of the law by participating as building commissioner in connection with matters in which Intoccia Construction, Inc. of Foxboro had a financial interest. At the time of his participation, Coelho had an arrangement to work for Intoccia Construction after he left town employment. Coelho also violated §18 of the law by acting as an agent for Intoccia Construction after he left town employment in connection with matters in which he participated as a building commissioner.

[In the Matter of Thomas Collett](#)

The Commission fined Hardwick Board of Health member Thomas Collett \$1,000 for using his position to attempt to influence The Alliance for the Homeless to use the services of his private water testing company, Tri-S Water Service. According to the Disposition Agreement, in 2002, The Alliance for the Homeless, a non-profit organization, began renting property in Hardwick with the intent of running a camp for children in summer 2003. The Board of Health regulates the water system of the camp. In September 2002, Collett drove to the camp in a town truck, identified himself as a Board of Health member to the

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camp's director and presented a proposed contract to provide the camp with water services at a monthly rate of \$866. Collett also pointed to a water pipe that, in his view, needed to be replaced and quoted a price of approximately \$8,000 to replace it. Collett subsequently submitted a vendor application to the Alliance Board of Directors. In November 2002, Collett was notified that the Alliance would not be retaining Tri-S's services. By invoking his official position as a BOH member in an attempt to influence the Alliance to hire Tri-S Water Service, Collett violated §23(b)(2).

In the Matter of Walter R. McGrath

The Commission fined Braintree Electric Light Department (BELD) General Manager Walter R. McGrath \$2,000 for violating the state's conflict of interest law by failing to disclose friendships with and entertainment provided by employees of Power Line Models (PLM), a corporation that provided consulting, design and engineering services to BELD. According to the Disposition Agreement, PLM had a variety of BELD projects on which it was working. As BELD's general manager, McGrath had authority over the employment and retention of consultants, including PLM. McGrath and two of PLM's principals have been friends for over 30 years. In 1999, McGrath attended Major League Baseball's All-Star Game at the invitation of one of these friends at PLM. PLM paid for the \$150 ticket. On two occasions in 2000, McGrath played golf with PLM employees at the invitation of one of these friends at PLM.

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inquiry. The plaintiff, John Doe, has filed a notice of appeal of the Superior Court's decision. Materials in this matter are impounded.

Commonwealth v. Jones and Commonwealth v. Tran

In each of these first degree murder cases, the defendant's counsel served

SECTION BY SECTION

THE CONFLICT OF INTEREST LAW, G. L. c. 268A

- Section 18 of the conflict of interest law prohibits a former municipal employee from acting as agent for or receiving compensation from anyone other than the municipality in connection with a particular matter in which the municipality is a party and in which he participated as a municipal employee.
- Section 19 generally prohibits a municipal employee from officially participating in matters in which he or she, a family member or a business partner has a financial interest.
- Section 20 generally prohibits a municipal official from having a financial interest in a contract made by a municipal agency of the same city or town.
- Section 23(b)(2) prohibits a public employee from using or attempting to use his or her position to obtain for the employee or others an unwarranted privilege of substantial value not properly available to similarly situated individuals.
- Section 23(b)(3) prohibits a public employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee's favor in the performance of his or her official duties.

The friend was reimbursed a total of \$178 by PLM for McGrath's greens fees. By taking official actions of interest to PLM when he was a long-time friend of two of its principals, McGrath created the appearance of a conflict of interest in violation of §23(b)(3). These appearance concerns were exacerbated by McGrath's receipt of a ticket to the Major League Baseball All-Star game and two rounds of golf, since they were paid for by PLM. McGrath could have avoided violating §23(b)(3) by making an advance written disclosure to his appointing authority of his friendship and his acceptance of entertainment.

In the Matter of Donald G. McPherson

Stow Planning Board member Donald G. McPherson was fined \$2,000 for violating the state's conflict of interest law by advocating for a bylaw to

create an overlay district for senior housing. McPherson knew the bylaw would make property he was trying to sell more valuable to potential buyers. McPherson owns 125 acres of industrially zoned land in Stow. After an informal town group known as the Housing Coalition submitted a proposed bylaw to create affordable housing for seniors, McPherson filed a disclosure with the town clerk in fall 2001 stating that he would not participate in the Board's action on the bylaw. According to the Disposition Agreement, "notwithstanding his disclosure," McPherson advocated in favor of the bylaw at the December 6, 2001 and January 15, 2002 Planning Board meetings. Town Meeting approved the bylaw in June 2002. By significantly involving himself as a Board member in the discussion regarding the bylaw at a time when he had a financial interest in the bylaw decision, McPherson violated § 19.

a subpoena on the Commission seeking documents covered by the confidentiality restrictions in G.L. c. 268B, §§ 3(g) and 4 and allegedly held by the Commission. Two separate Superior Court judges, without *in camera* review, quashed the subpoenas as they related to the alleged Commission documents.

FREE EDUCATIONAL SEMINARS

Free educational seminars are scheduled to be held in our office at Room 619, One Ashburton Place, Boston on Thursday, September 9 @ 10 a.m.; Tuesday, November 9 @ 2 p.m.; and Wednesday, January 5 @ 10 a.m.

For more information about these sessions or to schedule a seminar for your agency or municipality, call 617-727-0060.